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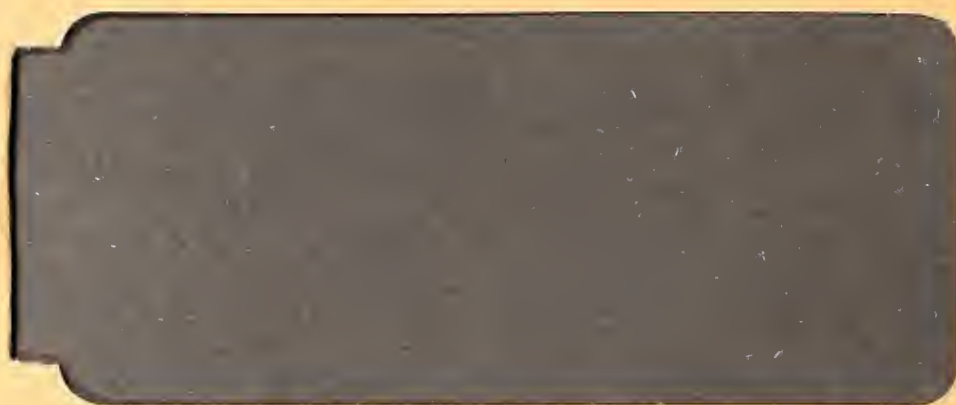
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A D M I R A L T Y

A Comment on Conflict of Laws

Ian F.G. Baxter

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# A D M I R A L T Y

## A Comment on Conflict of Laws

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### (1) Introduction

Conflict of laws (otherwise known as private international law) is the subject which deals with situations where all the facts did not occur within one state. The state in which the proceedings are brought is referred to as the "forum". It is not difficult to see that maritime commerce and carriage of goods by sea from one state to another (e.g. a container shipment from Montreal to Rotterdam in a ship registered in Liberia and chartered for the voyage by the consignors from Greek owners) can be quite a fertile source of problems in conflict of laws.

In general no real distinction is made between ordinary law and admiralty law in the main relevant areas, and indeed a number of the maritime cases have become landmark decisions in ordinary conflict of laws. [See, for example, in these materials: Vita Food Products; Ralli Bros.; The Halley]. The Canadian courts have usually followed the theories and principles of the leading English cases closely.

These materials are divided into sections as follows:

#### Section 1: Contracts

Castel, Canadian Conflict of Laws (1977) Vol. 2, pp. 540-541.  
Vita Food Products v. Unus Shipping [1939] A.C. 277 (P.C.).  
Compagnie d'Armement Maritime v. Compagnie Tunisienne de Navigation  
[1971] A.C. 572.  
Coast Lines v. Hudig & Veder Chartering [1972] 1 Q.B. 34.  
Ralli Bros. v. Compania Naviera Sota y Aznar [1920] 2 K.B. 287.

#### Section 2: Torts

Castel, Canadian Conflict of Laws (1977) Vol. 2, pp. 658-661.  
Leflar, American Conflicts Law (1968) pp. 344-346.  
The Halley (1868) L.R. 2 P.C. 193.  
Gronlund v. Hansen (1969) 68 W.W.R. 329, 69 D.L.R. (2d) 598.

### Section 3: General

Ehrenzweig, Private International Law (1972) pp. 216-230.  
 United Nations Convention on the Carriage of Goods by Sea, 1978  
 (the Hamburg Rules), arts. 21 and 22.  
 Additional Reading.

#### (2) Contracts

[Students who have not taken a course on conflict of laws are advised to read Castel, Canadian Conflict of Laws, Vol. 2, chap. 19].

The basic question in the contracts cases in the material is: what is the "proper law" of the contract? i.e. should the forum court decide the contract issue by applying its own interpretation of the law or that of a foreign state. Even if we regard admiralty as international law of the sea, it is obvious that the courts of different states will likely interpret and apply it differently. In current Anglo-Canadian doctrine the determination of the proper law of a contract may be expressed in nutshell fashion by two propositions:


(A) The parties may select the proper law expressly or impliedly in their contract.

(B) If there is no selection, the proper law is the system of law with which the transaction has its closest and most real connection.

The Vita Food Products case is concerned with the question of whether the parties are always free to select any proper law they wish. For example, are they entitled thereby to contract out of the application of an international convention such as the Hague Rules.

The Compagnie d'Armement and Coast Lines cases are examples of the considerable difficulties which the courts may have in applying the proposition (B) above, leading some people to wonder if this proposition is really suitable for complex maritime disputes, perhaps involving a ship registered in state A, with owners in state B, and charterers in state C, a charter party executed in state D, and a bill of lading issued in state E, etc.

The Ralli Bros. case raises an interesting point. It became illegal by Spanish law to pay such a high freight rate as was payable in Spain in terms of the charter party. Could the charter party be enforced in England?



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3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

(a) a place in a State within whose territory is situated:

(i) the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or

(ii) the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or

(iii) the port of loading or the port of discharge; or

(b) any place designated for that purpose in the arbitration clause or agreement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.

5. The provisions of paragraphs 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith is null and void.

6. Nothing in this article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

#### Additional Reading

- Castel, Canadian Conflict of Laws, Vol. 1, pp. 269-279 (jurisdiction).  
 Sinclair, Conflict of Laws Problems in Admiralty (1961) 15 S.W.L.J. 207.  
 McLean, Foreign Collisions and Forum Conveniens (1973) 22 I.C.L.Q. 748.  
 Collins, Arbitration Clauses and Forum Selection (1971) 2 J. of M.L. & C. 363.  
 Berlingieri, International Maritime Arbitration (1979) 10 J. of M.L. & C. 199.



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Admiralty : a comment  
on conflict of laws

